



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT  
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005

**Order No. 2011-A-0015**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Siemens Healthcare Diagnostics, Inc.  
Attn: Mr. Shawn Foxworth, CSP, CHMM  
Senior Environmental, Health and Safety Specialist  
500 GBC Drive, Building 503  
Newark, DE 19702

**Registered Agent:**

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

Dear Mr. Foxworth:

This is to notify Siemens Healthcare Diagnostics, Inc. ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapter 60 and 7 DE Admin. Code 1100 ("Air Quality Regulations"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

***BACKGROUND***

Respondent owns and operates a clinical chemistry facility located at 500 GBC Drive in Newark, Delaware ("Facility") where it designs, tests, and manufactures analytical medical equipment and testing materials. Respondent's facility includes four dual fuel fired boilers, one natural gas fired boiler, four natural gas fired emergency generators, two diesel fired emergency generators, two diesel fired portable generators and three diesel fired fire pumps. The combined potential to emit nitrogen oxides ("NO<sub>x</sub>") from all of the equipment is greater than 25 tons per year, the major threshold for New Castle County, and therefore would subject Respondent to the requirements and fees of 7 DE Admin. Code 1130, Delaware's Title V State Operating Permit Program ("Regulation 1130" or "Title V"). However, in the alternative, Respondent elected to

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accept operating limitations to qualify for a synthetic minor permit. The Department issued Respondent Permit: APC-83/0397-OPERATION (Amendment 4) (SM) ("synthetic minor permit") on January 10, 2008.

On April 12, 2010, Respondent submitted a letter notifying the Department it had installed an emergency generator on January 4, 2010, to replace the original generator, an 89 kilowatt (119 horsepower) natural gas fired emergency generator that had been installed around 1970. Respondent indicated that the generator was for emergency use only, would be operated less than 150 hours per year and that it considered the new generator to be a "like for like" replacement, better known as "replacement in kind." It further indicated a permit was not needed. The new emergency generator is a 150 kilowatt (401 horsepower) natural gas fired generator and therefore because it is larger than the original generator, it cannot be considered a "replacement in kind." Therefore, Respondent should have applied for a permit per 7 DE Admin. Code 1102, to install the generator. In addition, 7 DE Admin. Code 1144 requires owners or operators of emergency generators submit to the Department, certain information regarding the generator, by the date of installation.

The Department visited the facility on July 14, 2010 and confirmed installation of the new emergency generator. The Department requested emissions information for the new generator, but Respondent indicated attempts to obtain that information from the manufacturer were unsuccessful and that it was told the information did not exist. The Department issued a Notice of Violation ("NOV") to Respondent on July 23, 2010. The NOV required Respondent submit the emission information for the new emergency generator by September 1, 2010. If the information could not be obtained from the manufacturer, Respondent would have to either arrange for testing of the emergency generator to demonstrate compliance with 7 DE Admin. Code 1144 or remove it from the facility. In addition, the NOV further required Respondent submit operating logs for the emergency generator since its installation. On August 19, 2010, Respondent provided the emission information and stated that the emergency generator had been operated 12.1 hours since its installation in January 2010. A review of the emission information showed that the generator is compliant with the emission limitations set forth in 7 DE Admin. Code 1144.

### ***FINDINGS OF FACT***

1. Respondent's facility includes four dual fuel fired boilers, one natural gas fired boiler, four natural gas fired emergency generators, two diesel fired emergency generators, two diesel fired portable generators and three diesel fired fire pumps.
2. Collectively, the equipment has the potential to emit NO<sub>x</sub> in excess of 25 tons per year, which subjects Respondent to Title V requirements and fees.
3. In the alternative, Respondent accepted operating restrictions in order to obtain a synthetic minor permit.
4. Currently, operations at Respondent's facility are governed by Permit: APC-83/0397 (Amendment 4)(SM) dated January 10, 2008.

5. On April 12, 2010, Respondent submitted a letter, in accordance with 7 DE Admin. Code 1102 and 1144, notifying the Department it had installed a new 150 kilowatt emergency generator on January 4, 2010, as a "replacement in kind" for an 89 kilowatt natural gas fired emergency generator.
6. The new generator is larger than the original and therefore cannot be considered "replacement in kind."
7. Installation of the new generator required a permit pursuant to 7 DE Admin. Code 1102.
8. Seven DE Admin. Code 1144 requires owners or operators of emergency generators submit certain information regarding the generators to the Department by the date of installation.
9. Based on the above, the information required by 7 DE Admin. Code 1144 should have been submitted to the Department by January 4, 2010, but was not submitted until April 12, 2010.
10. A Notice of Violation ("NOV") was issued to Respondent on July 23, 2010.
11. The NOV required Respondent submit the operating logs and the emissions information for the new generator by September 1, 2010.
12. Respondent provided the required information in a letter dated August 19, 2010.
13. A review of the information revealed that the generator was in compliance with the emission limitations set forth in 7 DE Admin. Code 1144.

### ***VIOLATIONS***

1. Seven *Del. C.* § 6003(b)(1) states:  
*"No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant."*
2. Section 2.1 of 7 DE Admin. Code 1102 states:  
*"Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form."*
3. Section 1.3.1 of 7 DE Admin. Code 1144 states:  
*"The owner of a new stationary generator shall submit the information required in 1.4 of this regulation and comply with the requirements of this regulation by the date of installation."*

## ***CONCLUSION***

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated 7 *Del. C.* § 6003(b)(1) by installing and using a 150 kilowatt emergency generator, which emits NO<sub>x</sub>, an air contaminant, without obtaining a permit from the Secretary.
2. Respondent violated Section 2.1 of 7 DE Admin. Code 1102 when it installed and initiated operation of a 150 kilowatt emergency generator, which emits NO<sub>x</sub>, an air contaminant, prior to receiving approval of its application, which it had not submitted.
3. Respondent violated Section 1.3.1 of 7 DE Admin. Code 1144 by failing to submit the information required by Section 1.4 to the Department by January 4, 2010, the date it installed the generator.

## ***ASSESSMENT OF PENALTY***

Pursuant to the provisions of 7 *Del. C.* § 6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of \$8,405.00 for the violation identified in this Assessment and Order and costs according to 7 *Del. C.* § 6005(c). Respondent shall submit a check to the Department in the amount of \$8,405.00 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: Valerie M. Satterfield, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, Delaware 19904.

## ***PUBLIC HEARING***

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

***PRE-PAYMENT***

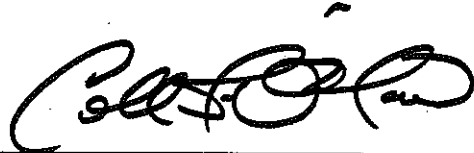
Respondent may prepay the administrative penalty of \$8,405.00 and the Department's estimated costs in the amount of \$1,260.75 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

Date

7/26/11

Collin P. O'Mara, Secretary



cc: Valerie M. Satterfield, Deputy Attorney General  
Ali Mirzakhali, P.E., Director  
Paul Foster, P.E., Program Manager  
Everett DeWhitt, PhD., Managing Engineer  
Amy Mann, Engineer  
Dawn Minor, Paralegal  
Jenny Bothell, Enforcement Coordinator  
Dover File

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## ***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Siemens Healthcare Diagnostics, Inc.** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Siemens Healthcare Diagnostics, Inc.** will pay the administrative penalty in the amount of \$8,405.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Siemens Healthcare Diagnostics, Inc.** will reimburse the Department in the amount of \$1,260.75 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Valerie M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**Siemens Healthcare Diagnostics, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_